

Money is Time

VB verfassungsblog.de/money-is-time/

Maximilian Steinbeis Sa 9 Jun 2018

Sa 9 Jun 2018

Dear Friends of Verfassungsblog,

Instead of my usual editorial, let me address you today with a request: We ask for your support.

I am often asked how Verfassungsblog is actually funded. My answer is: We have fantastic institutional partners, most of all the WZB Center for Global Constitutionalism, who help keeping us afloat. Above all, however, we have a very, very lean cost structure. We have no office to maintain, no employees to pay (so far), hardly any investments to make. Essentially, our expenditures consist of our time.

That was great as long as it worked. But now we're reaching our limits. You may have noticed that the blog is cracking at the seams. We urgently need more editorial capacity, and we need a clearer and more functional layout. In short: we need money.

I want to keep this project independent. I'd rather shoot myself in the leg before I brick it in behind a paywall or plaster it with obnoxious advertising. Verfassungsblog should remain Verfassungsblog. This is what we hope for: that Verfassungsblog is worth something to you. Let's say: 4 € a month.

One thousand frequent Verfassungsblog readers who put 4 € in the pot every month. That should be doable, don't you think?

We have launched a campaign on *Steady*, a platform specializing in crowd funding of journalistic projects. The campaign is

[HERE!](#)

It's easy, comfortable and safe, just takes five minutes. Be assured of our eternal love and gratitude!

Chief Physicians and Wedding Cakes

If one thing is for sure in these unstable times it's that it is unlikely for us to get bored. In **Germany**, the Coalition formerly known as Grand plans to increase state party funding by a whopping 25 million euros, firstly because the SPD needs money to cover their digital media expenses (we kind of sympathise with that, in fact) and secondly, because it can (or thinks it can). Social Democrats in a frenzy of death. It's hard to watch, actually. State party funding is an all-time classic of German constitutional jurisprudence, though, and we will return to this subject next week.

The situation of the Christian Democrats, on the other hand, is hardly less spooky a spectacle, certainly if one focuses on the European perspective. The European People's Party under Joseph Daul and Manfred Weber cannot for the life of them make up their mind to draw a clear line between themselves and illiberal autocrats of Viktor Orbán's ilk. Nor will the EPP acquiesce to the scandal that Emmanuel Macron's upstart *En Marche* party may claim a say in picking the next Commission President. As the party with the still best prospect of getting the most votes, it is a huge fan of the so-called *Spitzenkandidaten* process, which would make some sense in terms of democratic theory if there was anything like transnational lists at the elections. There probably won't, though, which in turn is the result of the machinations of the very EPP that is so concerned about European democracy that it takes the greatest care to snuff all life out of Macron's proposal for transnational lists for the foreseeable future.

Jean Claude Juncker was the EPP *Spitzenkandidat* last time and thus has become President of the Commission, in which capacity he and his sidekick Martin Sellmayr now seem to make it their business to shove spokes between the wheels of VP Frans Timmermans' Article 7 procedure against Poland in the most diligent manner. At the same time, there are rumours that some in the EPP would like to make the Polish governing party PiS members of their own club after the European elections. If that happens – close your eyes for a moment and imagine Angela Merkel away – then the EPP is no longer the party that cannot part with Orbán. Then the EPP is the Orbán party. The whole grim scenario is described by ANDREW DUFF.

Indeed, the Article 7 procedure against Poland has so far not been able to do much, as far as reining in the PiS government's judicial policy is concerned. On the initiative of GRÁINNE DE BÚRCA and WOJCIECH SADURSKI, some of the world's most prominent legal and constitutional scholars have signed an open letter calling on Timmermans to prevent the imminent gutting of the Polish Supreme Court by means of an infringement procedure. For me, it's an honour and a privilege to publish the letter on Verfassungsblog and to be allowed to put my signature underneath it, too. If you wish to support the cause and add your name, by all means do.

To return to the European elections, there seems to be a chance that there will be a EU-wide threshold clause this time, on the basis of European law. The 5 percent and 3 percent threshold that existed in Germany before 2014 had been declared unconstitutional by the Federal Constitutional Court on the basis of, let's say: disputable arguments. According to THOMAS GIEGERICH's analysis, Karlsruhe will probably have to accept the threshold if it comes back in through the door of European law (German).



In the current European Parliament, however, you still find all sorts of clowns, weirdos and fringe extremists, including, until recently, a dapper septuagenarian Pole named Janusz Korwin-Mikke, whose staggeringly sexist and racist slogans were sanctioned by the

Speaker – unlawfully so, according to a ruling by the European General Court, as the EP must respect the freedom of expression of its members. HEIKO SAUER examines the arguments of the court and is surprised that it places so much emphasis on fundamental rights and so little on the organisational aspects (German).

In this before-summer-break season, the Luxembourg pipeline pumps so much noteworthy news items onto our desks that we can hardly keep up. ANDREA EDENHARTER analyses the Opinion of the Advocate General in the so-called *Chefarzt* case. That case concerns the sacking of a chief physician at a Catholic hospital who dared to get divorced and remarry, the churches' labour law privileges in **Germany** and the next potential major conflict between the respective constitutional courts of Germany and the EU (German).

Another AG Opinion with potentially far-reaching consequences is about the extent to which social rights in the European Charter of Fundamental Rights affect legal relations between private individuals, which is of great concern to civic law in general and to CLEMENS LATZEL in particular (German).

The European Court of Justice has ruled on the data protection obligations of the operators of Facebook pages, as JOHANNES MAROSI reports.

A real blast is the ECJ ruling on the member states' obligation to recognise same-sex marriages made elsewhere in the EU, even if they themselves abhor from that heathen institution. ULADZISLAU BELAVUSAU celebrates that decision as a giant step towards the constitutional federalisation of the EU – in stark contrast to the ruling of the **US** Supreme Court on the freedom of conscience of religious opponents of same-sex marriage, which relieves a baker of wedding cakes of the obligation to serve gay/lesbian customers as well as straight couples.

The stake for the constitutional future of Europe are equally high in the *Celmer* case: Can Ireland refuse to execute a **Polish** arrest warrant because the independence of the Polish judiciary can no longer be trusted following the recent "reforms" of the PiS government? ADRIANI DORI reports on the hearing before the ECJ last week.

Courts, tools and anti-corruption authorities

There is also big news from Strasbourg: The European Court of Human Rights has condemned **Lithuania** and **Romania** for their connivance with the CIA which ran secret torture sites on Lithuanian and Romanian soil to interrogate terrorism suspects. ELIF ASKIN reports.

Meanwhile, the flow of alarming news from Central and Eastern Europe continues: BIANCA SELEJAN GUTAN reports on the judgement of the **Romanian** Constitutional Court, which backstabs the President in his efforts to protect the chief investigator of the anti-corruption authority Laura-Codruța Kövesi from being dismissed by the corrupt government, and thereby transforms Romania from a semi-presidential to a hybrid parliamentary democracy, and all that on the basis of highly questionable arguments.

What happens when a constitutional court is made the tool of the government's political interests can also be seen in **Hungary**: The Hungarian Constitutional Court has suspended the review of the so-called "Lex CEU" – by which the Orbán government tries to break the neck of the Central European University founded by George Soros – until, well, the CEU's neck is sufficiently broken to render a judgment. A parallel decision has been made on the law on alleged "foreign agent" NGOs. GÁBOR HÁLMAI calls this conduct by the Court a betrayal of academic freedom and freedom of association.

In recent years, the Italian Constitutional Court has engaged in an epic battle with the European Court of Justice on the question of whether **Italy**, for the sake of its constitutional identity, may stick to its time-bar periods for the prosecution of tax evaders even if they go against EU law. The so-called *Taricco* saga has now come to an peaceful end with a final ruling by the Constitutional Court. CHIARA AMALFITANO and ORESTE POLLICINO, however, are rather concerned about the insistent tone with which the Italian court continues to harp on Italian constitutional identity.

MICHAEL WILKINSON takes up last week's debate over **Italy's** President Mattarella's decision to deny the Lega/M5S government its Eurosceptic candidate for the office of Minister of Economy and Finance. In his view, both the approval of this decision and its characterisation as a problem of EU law misses the point – namely that this crisis is Italian and must be resolved in Italy, even at the price of leaving the Euro zone or the Union.

Speaking of leaving: the **British** decision on Brexit and the victorious "Vote Leave" campaign was marked by so many irregularities and violations of the law that one could ask whether it could possibly be annulled in court. EWAN McGAUGHEY does ask that question and comes to the legally not unfounded conclusion: It could be, indeed.

Macedonia does not want to leave the EU, but to enter it. The prospect of accession have greatly improved after Greece seems prepared to abandon its blockade stance if the Republic of Macedonia agrees to call itself "Northern Macedonia" or "Upper Macedonia" in the future. That, however, would be the Macedonians' call who would have to approve this in a constitutional referendum. What happens if they don't? TONI DESKOSKI investigates.

Finally, please give a warm round of applause for the glossator FABIAN STEINHAUER, who returns to these pages with a post as Steinhauerian as one can ever wish for: It is about gender, madness, *Staatsrechtslehrer* and *Staatsrechtslehrer*innen*, phantasms, subcultures, fear and Roman Herzog (German).

Elsewhere

Pouf! That was 16 articles in one week. To edit each of them, some more intensely, some less, is a lot of work, definitely more than I can manage by myself in the long run. Therefore let me remind you of this fantastic link: HERE!

Interesting things from elsewhere: SABRINA MÜLLER investigates the legal framework and consequences of the trip some AfD Members of the Bundestag undertook to Assad's Syrian paradise in order to see for themselves how utterly safe it is for the return of refugees (German).

MANUEL MÜLLER criticizes Chancellor Merkel's response to Macron's call for a reform of the Eurozone (German).

JEAN PHILIPPE DEROSIER deplores the severity with which French lawmakers are tightening the screws on the right of asylum (French).

GIOVANNI PICCIRILLI describes in a two-part post why the crisis in Italy was not only a storm, but could indicate the beginning of a climate change.

MARGA LEÓN celebrates the new government in Spain as the most feminine in the world (Spanish).

LAWRENCE G. SAGER and NELSON TEBBE show that the US Supreme Court's ruling on the right of pious wedding cake bakers to refuse their services to same-sex couples is less reactionary than the outcome would suggest. ILYA SOMIN believes that the verdict will even help in the fight against Trump's Muslim ban.

HANNES JÖBSTL looks at the role of the Israeli Supreme Court in the often deadly clash between the army and the Palestinian demonstrators on the wall.

DINESHA SAMARARARATNE describes the experiences in Sri Lanka to involve the public in the reform of the constitution after the end of the civil war.

If you actually read all these posts, then you are either a constitutionalist superhero or you have too much time. Time is money. For us, money is time. And so one last time before I leave you alone with this (until next week): HERE!

All the best and a successful week to you,

Max Steinbeis

LICENSED UNDER CC BY NC ND

SUGGESTED CITATION Steinbeis, Maximilian: *Money is Time*, *VerfBlog*, 2018/6/09, <https://verfassungsblog.de/money-is-time/>.